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No. 82-291

IN THE

Supreme Court of the United States

October Term, 1982

DOLLAR ELECTRIC COMPANY
Petitioner,
SYNDEVCO, INC., and
FORD MOTOR COMPANY,
Respondents.

BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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September 16, 1982

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QUESTION PRESENTED FOR REVIEW

As pointed out hereinafter, the questions raised by the Petition either have no foundation in the facts of the case or the decisions below, or would not be dispositive of the case no matter how answered.

THE PARTIES

The parties are identified in the case heading.

In compliance with Rule 28.1, Appendix A to this brief lists all parent companies, subsidiaries and affiliates of Ford Motor Company other than wholly owned subsidiaries. Syndevco has none.

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THE SUPPLEMENTAL OPINION OF THE DISTRICT COURT THAT WAS OMITTED FROM THE PETITION

Following its initial opinion of September 10, 1979 and on December 26, 1979, the District Court handed down a supplemental opinion in response to petitioner's "Motion to Amend Findings and Judgment or Alternatively to Grant a New Trial." This second opinion is nowhere mentioned in the Petition.

A copy of the opinion of December 26, 1979 is attached to this brief as Appendix B. It appeared in the Joint Appendix in the Court of Appeals at pages 84-86. The motion and supporting brief which elicited the opinion appeared in the Joint Appendix at pages 59-83, and the Order denying the motion appeared at page 87.

SUPPLEMENTAL STATEMENT OF THE CASE

The Petition, under the heading "Statement of the Case," is primarily devoted to reargument of the issue of patentability based on the contention that the alleged invention of the Winsand patent No. 3,281,747 in suit, filled a long felt need for a small sized transformer for use in resistance welding in the automobile industry. The fact is that while the Winsand patent in suit barely mentions in the specification and in a reference to the drawing that the disclosed transformer may be used in a resistance welding operation, there is no other reference to welding in the patent and no reference to small size, nor was there any representation made to the Patent Office that the disclosed transformer had any advantages for use in welding.

Near the end of the prosecution of the application for the Windsand patent and when all claims had been rejected as anticipated by or obvious in view of a German patent to Bauer, No. 1,303,494 which disclosed a transformer for a moving picture camera, or over Bauer in combination with a U.S. patent to Girton 3,024,431, Windsand's attorney sought by amendment to limit all claims to a welding transformer. Entry of the amendment was refused on the ground it was too late. In response, Windsand's attorney petitioned the Commissioner for an order directing entry. Before the petition could be acted on, Windsand's attorney learned that the Examiner would allow all claims if present claim 1 (then numbered 4) was amended in a respect not relevant here. The attorney promptly made the suggested amendment *and withdrew the petition*, thus restoring the claims to a scope that covered transformers useful for any and all purposes. (JA in Court of Appeals at pp 812-846) The

District Court Opinion (Pet. App. A-24 to A-28) held that Windsand was estopped to contend that the claims were patentable as defining a transformer useful in a welding transformer because they specified no features useful only in a welding transformer, and because of the deliberate and voluntary cancellation of all references to welding in the claims.

Even if the claims are construed to require a welding transformer, the evidence precludes a holding that the patented transformer filled a long felt need. Eighteen years after the alleged invention Ford Motor Company is still using the Girton '431 construction (Joint App Ct of Appeals 421). The evidence of commercial success largely rests on the accused transformer, which is quite unlike the transformer disclosed in the Windsand patent*.

A second point dealt with in petitioner's "Statement of the Case" resides in the contention that in finding the claims of the patent in suit invalid the courts below erred in not applying the obviousness test of 35 USC 103 and *Graham v. Deere*, 383 US 1 (1966). According to petitioner, the courts below held the patent claims invalid because the several elements of the claimed combination did not produce a synergistic result, i.e. a result that is more than the mere sum of the results of the elements acting individually, citing *Sakraida v. Ag Pro, Inc.*, 425 US 273 (1976), *Anderson's-Black Rock, Inc. v. Pavement Salvage Company*, 396 US 57 (1969), and *Great A & P Tea Co. v. Supermarket Equipment Corp*, 340 US 147 (1950).

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* Respondents, Syndevco and Ford, cross-appealed urging that the District Court's holding of infringement was erroneous, but the Court of Appeals did not rule on that issue because of its conclusion that the claims in suit are invalid. If this Court should reverse the courts below on the validity issue, the Court of Appeals will have to rule on the Cross Appeal.

However, it is unnecessary to consider petitioner's detailed fact statements because, as will be seen, it is clear from the following discussion of petitioner's Question 1 that these contentions fail to constitute a ground for granting certiorari.

Another point raised by the petition is the contention that the courts below improperly considered the Girton patent 2,304,431 as prior art because respondents had not given thirty days notice of reliance upon that patent as required by 35 USC 282. This point is dealt with hereinafter in considering petitioner's Question 3.

SUMMARY OF THE ARGUMENT

PETITIONER'S QUESTION 1

This question rests on a false assumption that the courts below failed to apply the test of unobviousness enacted by 35 USC 103 and elucidated by this Court in *Graham v. Deere, supra*.

As will be pointed out hereinafter the District Court painstakingly made the findings required by *Graham*, and those findings lead inexorably to the legal conclusion that all of the claims of the Winsand patent in suit are invalid.

Plaintiff Dollar Electric acquiesced in that conclusion as to claims 1, 2 and 3 of the patent, but appealed the conclusion as to claims 4 and 5 without attacking the District Court's findings of fact. The Court of Appeals affirmed the holding that claims 4 and 5 were invalid.

Plaintiff's Question 1 and the arguments presented with reference to it seek to make the point that because the District Court quoted language from the *Sakraida* and *Anderson's-Black Rock* decisions of this Court in which the improbability of producing a synergistic result from

a combination of old elements is discussed, that the District Court had in some manner made synergism a condition of patentability. This is not the proper interpretation of the District Court's opinion, as is made clear by its supplemental opinion of December 26, 1979. Moreover, the opinions of the Court of Appeals apply 35 USC 103 and this Court's decision in *Graham* in affirming the decision below with no reference to synergism, or a new and surprising result.

PETITIONER'S QUESTION 2

Question 2 and Dollar's argument in connection with it appear to rest on an erroneous interpretation of the majority opinion in the concurring opinion of Judge Engel in the Court of Appeals below.

Judge Engel in his concurring opinion states that:

> "I would avoid the suggestion in the majority decision that the trial judge's rejection of Claim 2, not appealed from here, is the 'law of the case' *and for this reason commands a similar result for* Claim 4." (emphasis added)

Neither the emphasized concluding clause nor its equivalent were included in the majority opinion. Moreover, the majority considered claims 4 and 5 on their own and held them invalid for obviousness, and Judge Engel concurred.

This offers no support for the petition.

PETITIONER'S QUESTION 3

Under this question, Dollar argues that the courts below could not base a holding of obviousness on the patent to Girton because no notice was given by defendants prior to trial pursuant to 35 USC 282.

This is no ground for granting the petition because the sole purpose of the statutory notice requirement is to prevent surprise, and in this case Dollar Electric, itself, placed the Girton '431 patent in evidence along with supporting evidence. And Winsand, the inventor of the patent in suit, testified during Dollar's prima facie case concerning its relevance as prior art and that it was the most pertinent prior art with which he was familiar at the time he made the alleged invention of the patent in suit.

Accordingly, Dollar Electric has not been surprised or prejudiced. Moreover, the courts below also held the claims invalid on other grounds.

ARGUMENT

PETITIONER'S QUESTION 1

> "Is there a special, more strict, non-statutory test for determining the validity of patents for so-called 'combination' inventions as is the rule in the Fifth, Sixth and Eighth circuits, or, does the test set forth in 35 USC 103 of obviousness or non-obviousness apply to patents for all inventions, whatever their type, as is the rule in the Third and Seventh circuits, and at least one panel of the Ninth Circuit?"

This question asks the Court to decide which of two alleged tests of patentability is correct. The second mentioned test, as made clear in the petition, is set forth in *Graham v. Deere, supra*, and in 35 USC 103. According to the petition, the first, which is applicable to combinations of old elements, allegedly requires as a

condition of patentability that the old elements produce a synergistic result, which is more than the sum of their several effects taken separately, citing *Anderson's-Black Rock v. Pavement Salvage Co., Inc., supra*, and *Sakraida v. Ag Pro, Inc., supra*. Petitioner asserts that only the second test is appropriate, namely the test of obviousness.

At the outset it is by no means clear whether synergism is an independent prerequisite for patentability or merely a guide for application of the statutory test of nonobviousness where the patent claims in question call for a combination of old elements. At least two lower courts have held that synergism is not an independent test of patentability: *Republic Industries, Inc. v. Schlage Lock Co.*, 592 F.2d 963 (7th Cir. 1979), and *Rengo Co. v. Molins Machine Co.*, 657 F.2d 535 (3rd Cir. 1981), *cert. den.* 70 L.Ed 2d 591, 102 S.Ct. 600 (1981); and in *Dann v. Johnston*, 425 US 219, (1976) this Court held that the invention in issue was unpatentable because obvious to one skilled in the art, without mentioning synergism.

In *Roanwell Corporation v. Plantronics, Inc.*, 429 US 1004 (1976) a majority of this Court (Justices Brennan and White dissenting) refused to grant certiorari to resolve the question of whether the proper test of patent validity is unobviousness or the existence of a synergistic result, where the lower court had sustained a patent on the ground that its subject matter was unobvious.

But this question need not be resolved because it is clear from the following consideration of the opinions of the courts below that they applied the statutory and *Graham-Deere* test to which petitioner has no objection.

In *Graham v. Deere, supra*, the Court said:

> "While the ultimate question of patent validity is one of law, A. & P. Tea Co. v. Supermarket Corp., supra, 340 US at 155, 95 L ed at 168, the § 103 condition, which is but one of three conditions, each of which must be satisified, lends itself to several basic factual inquiries. Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. Such secondary considerations as commercial success, long felt but unsolved needs, failure of others, etc., might be utilized to give light to the circumstances surrounding the origin of the subject matter sought to be patented. As indicia of obviousness or nonobviousness, these inquiries may have relevancy." 383 U.S. at 17-18.

Initial Opinion in the District Court

The District Judge in his initial opinion made a painstaking analysis of the evidence and detailed findings on the three factual inquiries required by *Graham* (App. A-1 to A-33). Having done so he concluded that the subject matter of claims 4 and 5 of the Winsand patent 3, 281,747 was obvious (A-33 to A-34). Following the statement of his conclusions respecting obviousness he stated:

> ". . . In arriving at this conclusion, I have reviewed Claims 4 and 5 as 'combination patents.' As such, they are subject to a very strict

> scrutiny. Great Atlantic & Pacific Tea Co. v. Super-Market Equipment Corp., 340 U.S. 147, 87 USPQ 303 (1950). The test for such patents is that they must produce a synergistic result; they must somehow exceed the sum of their parts. A new or surprising result must be present. Anderson's Black-Rock, Inc. v. Pavement Salvage Co., Inc., 396 U.S. 57, 163 USPQ 673 (1969); Sakraida v. Ag Pro, Inc., 425 U.S. 273, 189 USPQ 449 (1976); Shatterproof Glass Corp. v. Guardian Glass Co., 462 F2d 1115, 1123, 174 USPQ 33 (1972); Bontrager v. Steury Corp., 457 F Supp 526, 535, 201 USPQ 813, 820 (N.D. Ind. 1978). The Winsand device functions just as expected. It produces no new result." (Pet. App A-34)

The quoted pararaph is followed by a discussion of the "secondary considerations" referred to by *Graham*, and a statement that they did not justify a holding of validity.

District Court's Supplemental Opinion of December 26, 1979 (Appendix B to this brief)

The District Court's supplemental opinion of December 26, 1979, was rendered in response to petitioner's "Motion to Amend the Findings and Judgment, or Alternatively to Grant a New Trial." The brief filed in support of that motion appears in the Joint Appendix in the Court of Appeals at pages 59-83. It raises all of the contentions raised in support of the present petition.

The District Court's opinion on the motion was included in the Joint Appendix in the Court of Appeals at pages 84-86 and is attached hereto as Appendix B. In that opinion the District Court reiterated the basis for its

holding that the subject matter of claims 4 and 5 was obvious within the meaning of 35 USC 103; *and in doing so made no mention of the questions of synergism, new result or unexpected result*. Nor did it indicate that patents on combinations of old elements should be given any treatment other than that to which other patents were subject.

This supplemental opinion makes clear, if the initial opinion did not, that at least one independent ground for the holding of invalidity rested unequivocally on the conclusion that the subject matter was obvious within the meaning of 35 USC 103. Whether or not other grounds were or are found for holding the patent claims invalid is thus irrelevant and immaterial.

Opinion of Court of Appeals (Pet. App. B-1 through B-9)

The Court of Appeals opinion of February 12, 1982 affirmed the District Court's holding that claims 4 and 5 of the patent in suit are invalid, but did so only upon the ground that the subject matter of those claims was obvious within the meaning of 35 USC 103. The pertinent language of the majority opinion reads as follows:

> "Judge Feikens further held that Claim 4 was an obvious adaption of the Bauer plug tap switch.
>
> "To specify a housing to enclose the equipment did not amount to an invention as it was old as the art. *American Seating Co. v. National Seating Co.*, 586 F.2d 611 (6th Cir. 1978).
>
> "The district judge further held that Claim 4 was invalid as an obvious combination of Bauer '494 and Girton '431 within the meaning of 38 USC 103. We agree." (B-7)

In discussing claim 5, the majority opinion used the following relevant language:

> "The patent examiner in rejecting Winsand's claims stated:
>
> > 'Whether the terminals of a disconnect plug and/or the tap terminals are arranged in a straight line or in a circular is without patentable merit.'
>
> "Dollar's expert witness Townsend Beaman testified that he regarded them as equivalents. In other words, it was obvious."
>
> "The arrangement of three tap terminals in a straight line so that the plug can engage the middle terminal and either of the other two is disclosed in the parior (sic) patent to McArdle '200."
>
> "What has been said in discussing Claim 4 is equally applicable to Claim 5 and the district court's ruling as to Claim 4 requires a holding that Claim 5 is also invalid and we so hold." (Pet. App B 8 and 9)

Engel, Circuit Judge, wrote a concurring opinion in which he said:

> "I concur because I agree that the district court's findings that Claims 4 and 5 are invalid as an obvious combination of Bauer '494 and Girton '431 within the meaning of 35 USC 103 are not clearly erroneous." (Pet. App B-9)

The Court of Appeals opinions contain no mention of any criteria of invalidity other than obviousness. For that reason alone the petition should not be granted for consideration of Question 1, which is only relevant if the courts below had *not* held claims 4 and 5 invalid for obviousness.

PETITIONER'S QUESTION 2

> "Does the novel 'law of the case' theory pronounced by the Court of Appeals by which the Court found appealed claims invalid through an invidious comparison of non-appealed claims found invalid by the District Court constitute an impermissable conflict with the express language of the second sentence of 35 USC 282 that 'each claim of a patent . . . shall be presumed valid independently of the validity of other claims. . .'?"

Petitioner brought this suit in the District Court on all five claims of the Winsand patent, but when all claims were held invalid, petitioner appealed only as to claims 4 and 5 (Pet. App. B-2). "Question 2" prompts a consideration of the differences between these two sets of claims and the significance of those differences in weighing the validity of the appealed claims that are here involved.

Since no appeal was taken from the holding that claims 1, 2 and 3 were invalid the majority opinion in the Court of Appeals at Pet. App B-2 stated:

> "It is noteworthy that since Dollar did not appeal from the judgment of the District Court holding claims 1, 2 and 3 invalid, that part of the judgment has now become final and is the law of the case."

The majority opinion went on to explain the scope of claims 4 and 5 and point out how they differed from corresponding invalid claims 2 and 3, respectively, concluding that claims 4 and 5 were invalid for

obviousness. Judge Engel, in his concurring opinion (at Pet. App. B-9) agreed that claims 4 and 5 "are invalid as an obvious combination of Bauer '494 and Girton '431 within the meaning of 35 USC 103," but added "I would avoid the suggestion in the majority decision that the trial judge's rejection of claim 2, not appealed from here, is the 'law of the case' *and for this reason commands a similar result for claim 4.*" (emphasis added)

However, the majority opinion does *not* contain the phrase which is emphasized in the above quote from Judge Engel and which reads "and for this reason commands a similar result for claim 4," nor did the majority opinion anywhere suggest that the invalidity of claims 1, 2 and 3, or any of them, reflected adversely on the validity of claims 4 and 5. Accordingly, the perceived conflict did not exist.

Judge Engel in support of his comment said:

> "USC 282 contains: 'A patent shall be presumed valid. Each claim of a patent *(whether in independent, dependent or multiple dependent form) shall be presumed valid even though dependent upon an invalid claim. . .'* (emphasis added) The legislative history of this section seems to indicate that a 'law of the case' approach in circumstances such as this is not favored. S. Rep. No. 301, 89 Cong. 1st Sess. reprinted in [1965] U.S. Code & Cong. Ad. News 2315, 2319." (Pet. App. B-9)

As emphasized in the House Report on this amendment, (H. Report No. 113, 89 Cong., 1st Session, March 1, 1965), the primary purpose of the bill was to raise revenue and simplify patent examination by charging a lower fee for claims in the dependent form than for normal independent claims. To encourage use of the

dependent form of claim the above quoted statutory language insured that the validity of a dependent claim would not be adversely affected by the invalidity of the independent claim on which it is based. Incidentally, the Winsand patent in suit contains no dependent claims, but the same principles apply to broad and narrow independent claims.

It is the position of respondent that the "law of the case" expression merely means that the point in question has been finally adjudicated and can no longer be disputed between the same parties. It does not mean that adjudication of other questions, even if similar in some respects, is precluded. There is nothing in the Senate report cited by Judge Engel nor in the House Report cited above that conflicts with that position.

While each claim enjoys a presumption of validity, a court could not sustain a claim merely because it called for the features of another claim that has been held invalid in a final adjudication. The presumption of Section 282 goes only to the complete combination of elements claimed in the unadjudicated claim. This point was dealt with in *Bournes, Inc. v. United States*, 537 F.2d 486, 493, (Ct. Cls. 1976), in a case involving application of a collateral estoppel under *Blonder-Tongue Laboratories, Inc. v. University of Illinois Foundaton*, 402 US 313 (1971) to claims of a patent which were *not* involved in a prior suit involving the same patent. In the *Bournes* case the Court of Claims said:

> "Moreover, it is well settled that each claim of a patent is entitled to a presumption of validity and is to be treated as a complete and independent invention, 35 U.S.C. §§ 282, 288. Leeds & Catlin v. Victor Talking Machine Co., 213 U.S. 301, 319, 29 S.Ct. 495, 53 L.Ed. 805 (1909); Smith Industries International v. Hughes Tool Co., 396 F.2d 735, 736 (5th Cir. 1968)

> "However, there is nothing in any of those long-accepted principles which appears to foreclose, or is inconsistent with, a determination that the issues bearing on validity of two separate claims are substantively the same. To assess the identity of those issues, it is convenient to compare the adjudicated and unadjudicated claims. Obviousness of the unadjudicated claims not being an issue, it is clear that the difference revealed by such comparisons must be evaluated, not in terms of obviousness under a domino approach, but rather, in terms of the Graham issues. *Where the differences revealed by a comparison of the claims do not vary the relevant issues bearing on obviousness, collateral estoppel should apply*. Westwood Chemical, Inc. v. Molded Fiber Glass Body Co., 380 F.Supp. 517 (N.D. Ohio 1973), aff'd 498 F.2d 1115 (6th Cir. 1974)."

Accordingly, Question 2 offers no ground for granting certiorari.

PETITIONER'S QUESTION 3

> "Does the last sentence of 35 USC 282 permit a district court to fashion a hypothetical combination of prior art to support a finding of invalidity in the court's post-trial deliberations where *no* evidence was submitted during trial as to the hypothetical combination relied upon by the court?"

The obvious answer to Question 3 is yes, because 35 USC 282 places no limitation on a court's right to exercise its judgment in expressing grounds for holding a patent

invalid based on evidence properly before it. The last sentence of 35 USC 282 is merely a *notice* statute. It requires defendants in patent infringement suits to give advance notice of prior art they intend to rely upon; and its sole purpose is to avoid surprise at the trial. The statute does not require that any notice be given of how each prior patent is to be used in defense of the action, nor does it require notice of combinations of prior patents that are separately noticed.

The patent statutes as early as that of 1836 have contained such a provision; and this Court in *The Philadelphia and Trenton Railroad Co. v. Stimpson*, 39 US 448 (1840) said:

> "The object of this most salutary provision (Section 15 of the Patent Act of 1836) is to prevent patentees from being surprised at the trial of the cause, by evidence of a nature which they could not be presumed to know or be prepared to meet. . ."

The substance of the section 282 and its purpose is the same as the 1836 statute.

However, the courts have always allowed the exercise of discretion when formal notice was not necessary to prevent surprise. The present (1952) statute allows for discretion by the concluding clause:

> ". . .except on such terms as the court requires."

In *Brown v. Piper*, 91 US 37 (1875), this Court took judicial notice of the universally known ice cream freezer, and held the patent in suit was invalid on its face as involving nothing more than an apparatus, for preserving fish that utilized the principles of an ice cream freezer, saying:

> "The statute requiring notice was not intended to apply in such cases."

Similarly, in *Henry Manufacturing Co. v. Commercial Filters Corporation*, 489 F.2d 1008, 1011 (7th Cir. 1972), the court excused the failure to give notice of a prior Hermann patent on the ground that it was placed in evidence by the plaintiff along with expert testimony in regard thereto and had been cited by the Patent Office against the patent in suit. See also *Paddies, Inc. v. Broadway Department Stores, Inc.*, 147 F.Supp 373, (S.D. Cal. 1956), and *Roller Bearing Company of America v. Bearing, Inc.*, 322 F.Supp 703, (ED Pa. 1971).

In the present case petitioner complains that no notice of the Girton patent 3,204,431 was given under 35 USC 282, but no notice was necessary because the Girton patent (Pet. App. F-1, J-1) was introduced in evidence by Dollar Electric Company as PX 10; and during plaintiff's prima facie case Mr. Winsand, the inventor of the patent in suit, testified that Girton '431 constituted the closest prior art of which he had knowledge when he made the invention of the patent in suit (Joint App. Ct. Appeals page 423). In addition, petitioner introduced in evidence a physical specimen of the Girton transformer (PX 10A) and a photograph of that specimen (PX 15) which were identified by Winsand (Joint App. Ct. Appeals page 395). Townsend Beaman, an expert witness for Dollar, testified that a chart (PX 154, Joint App. Ct. Appeals page 903) of prior art patents, including Girton '431 "relates to some of the prior art patents that I thought were of particular interest in establishing the state of the art" (Joint App. Ct. Appeals pages 466-469).

Having, itself, introduced the Girton '431 patent *and attested to its relevance*, Dollar is in no position to criticize the court for relying on it. The defendants were under no obligation to establish facts useful to their defense that were established or conceded by plaintiff during its prima facie case. Nor can Dollar assert surprise as to its own evidence. See *Shatterproof Glass Corp. v. Guardian Glass Co.*, 462 F.2d 1115, (6th Cir. 1972) *cert. denied* 409 US 1034 (1972), in which the court made the following statements:

> "The purpose of the Sec. 282 notice is to prevent surprise."
>
> * * *
>
> "The right to this notice may be waived, . . ."
>
> * * *
>
> "The mere breach of Sec. 282 does not necessarily require reversal. Absent the required notice, the trial court may still allow proof of prior art where fairness is not sacrificed, and in this regard 'much discretion is committed to the trial judge.' Thermo King Corporation v. White's Trucking Service, Inc., 292 F.2d 668, 677 (5th Cir. 1961)."

Applying these statements, it is clear that Dollar waived its right to notice under Section 282 by offering the challenged evidence itself and by establishing or admitting its relevance. Moreover, since there can have been no surprise, there is no unfairness, and the District Court's reliance on the evidence constitutes an implicit finding that fairness was not sacrificed.

CONCLUSION

No question of public importance is involved here other than the public interest in favor of invalidating patents which do not meet the standards established by Congress and elucidated by the Supreme Court. Petitioner, by raising and prosecuting specious claims, has subjected respondents to a heavy burden which is not justified by the realities of the situation.

Accordingly, the Petition should be denied.

Respectfully submitted,

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September 16, 1982

APPENDIX A

List of subsidiaries (other than wholly owned subsidiaries) and affiliates of Ford Motor Company (U.S. Sup. Ct. Rule 28.1).

The principal United States and foreign affiliates and subsidiaries (other than wholly owned subsidiaries) of Ford Motor Company are as follows:

United States:

Eveleth Taconite Company
Fairlane Woods Associates (A Partnership)
Renaissance Center Partnership
Renaissance Center Phase II (A Partnership)
Fairlane Town Center (A Partnership)
Ford Aerospace & Communications Services, Inc.
Humboldt Mining Company
Mechanical Technology Incorporated
EDESA
ADELA
Maxwell Laboratories Incorporated
National Corporation for Housing Partnership
National Housing Partnership
Pooled Resource Investing in Minority Enterprise, Incorporated

Foreign:

Ford Motor Company of Canada, Limited
Ford Glass Industries Limited (Canada)
Ford Lio Ho Motor Company Ltd. (Taiwan)
Ford Motor Company of Malaysia, Sdn, Bhd, (Malaysia)
Ford Brasil S.A. (Brazil)
Ford Motor Company (Belgium) N.V.
Ford Motor Company A/S (Denmark)
O/Y Ford A/B (Finland)

Ford Motor Company Aktiebolag (Sweden)
Ford Nederlands N.V. (The Netherlands)
Escorts Tractors, Ltd. (India)
Hokkai Tractor Co., Ltd. (Japan)
Trans Canada Glass (Canada)
Compania Financiera de Inversiones y Credito, S.A. (Argentina)
RCA Solid State Ltd. (Brazil)
Toyo Kogyo, Ltd. (Japan)
Vitroflex (Mexico)
Carplastic S.A. (Mexico)
FCP Credit Corporation (Philippines)
FCP Finance (Philippines)
Ford Vehicle Finance (South Africa)
Bongotti S.A. (Brazil)
Fabrica de Tractors Agricolas, S.A. (Mexico)
Philco Radio e Televisao Ltda. (Brazil)

In addition to the foregoing, Ford Motor Company owns varying interests in the dealers in Ford automobiles, trucks or tractors and leasing companies set forth in the following list. The list was accurate as of July 31, 1982, and is the most current listing available:

ACTION LEASING & RENTAL INC, JACKSON, MISS
ADRIAN FORD-L-M INC, ADRIAN, MI
AL BENNETT FORD INC, FLINT, MI
AL PIEMONTE FORD SALES INC, MELROSE IL
ALL AMERICAN FORD INC, SAGINAW, MI
ALLEN KANE FORD INC, N. HOLLYWOOD, CA
ALPENA FORD L-M INC, ALPENA, MI
ALTRO LEASING INC, MOBILE, AL
AMERICAN AUTO LEASE, INC, FRAMINGHAM, MA
ANDREWS L-M INC, NEW BEDFORD, MA
ASTLEY LINCOLN-MERCURY, INC, CHILLICOTHE, OH
ATCHLEY FORD INC., OMAHA, NE
ATLANTIC FORD-MERCURY, INC, SACO, ME
AVALON FORD INC, CARSON, CA
BARRINGTON SALES & SERVICE, BARRINGTON, IL
BARTOW FORD LEASING INC, BARTOW, FLA

BATTLE CREEK FORD SALES, INC, BATTLE CREEK, MI
BAY STATE L-M INC, FRAMINGTON, MA
BEE FORD, INC, WATERBURY, CT
BELL L-M SALES INC, HIGHLAND PK, IL
BELLEROSE FORD IND, BELLEROSE, NY
BEN-HUR FORD SALES INC, SIOUX FALLS, SD
BERENS LINCOLN-MERCURY INC, CHICAGO, IL
BERKSHIRE FORD INC, READING, PA
BEST FORD INC, QUEENS VIL, NY
BEVERLY HILLS L-M SALES INC, BEVERLY HILLS, CA
BIG VALLEY FORD INC, STOCKTON, CA
BILL HOLTOM FORD INC, KANSAS CITY, KS
BILL LASKEY FORD SALES INC, MILAN, MI
BILL MC COY FORD L-M INC, MUNCIE, IN
BILL TONYES FORD INC, W HAVERSTRAW, NY
BILLY CANNON FORD INC, GUNTERSVILLE, AL
BILLY HOWELL FORD-MERC INC, CUMMING, GA
BLUE SPRINGS FORD SALES INC, BLUE SPRINGS, MO
BO LOVEIN FORD INC, NASHVILLE, GA
BOB BEARD FORD INC, AUGUSTA, GA
BOB BOYD LEASING INC, COLUMBUS, OHIO
BOB BURNETT FORD INC, GAINSVILLE, GA
BOB CHERRY FORD INC, NETCONG, NJ
BOB DORAN FORD INC, UNION, NJ
BOB HIGGINS L-M INC, TEXAS CITY, TX
BOB MEYER L-M INC, CINCINNATI, OHIO
BOB SINGER FORD INC, COLUMBUS, OH
BOB SNYDER FORD INC, ORRVILE, OH
BOB THOMAS FORD INC, HAMDEN, CT
BORCHERS FORD-L-M INC, RHINELANDER, WI
BRADLEY LINCOLN-MERCURY INC, DURHAM, NC
BRIDGE FORD INC, BROOKLYN, NY
BURLINGAME L-M INC, BURLINGAME, CA
C L C MOTORS INC, HOPSHAM, PA
CANDY FORD-MERCURY INC, CHARLOTTE, MI
CAPITOL LINCOLN-MERCURY, INC, CHICAGO HGTS, IL
CARRIAGE FORD INC, CLARKSVILLE, IN
CARSON LINCOLN-MERCURY INC, CARSON, CA
CENTRAL LINCOLN-MERCURY INC, EUGENE, OR
CENTURY FORD INC, ROCKVILLE, MD
CENTURY FORD OF EASTWOOD, BIRMINGHAM, AL
CENTURY FORD SALES, INC, ARLINGTON HT, IL
CHAMPION FORD INC, BALTIMORE, MD
CHAMPION MOTOR SALES INC, DALLAS, TX
CHEMUNG FORD INC, ELMIRA, NY

CHICAGO BUDGET RENT A CAR, ROSEMONT, ILL
CHINO HILLS FORD INC, CHINO, CA
CIVIC FORD INC, CANTON, OH
COASTAL FORD INC, MOBILE, AL
COLUMBIA L-M SALES INC, INDIANAPOLIS, IN
CONTINENTAL CAR & TRUCK LEASE, ROSEMONT, ILL
COUNTRY FORD INC, BELLE VERNON, PA
COVEY L-M SALES INC, PHOENIX, AZ
DAN BUCKLEY FORD, INC, SPRING VALLE, NY
DAN NEJA L-M INC, YUBA CITY, CA
DAVE KILHORN FORD INC, PITTSBURGH, PA
DAVE MARKLEY LEASING INC, YUKON, OK
DAYTON AUTO LEASE CO INC, KETTERING, OHIO
DEAN GONZALES FORD INC, BATAVIA, NY
DEAN YOUNG FORD INC, WILLIAMSPORT, PA
DEE HARRISON FORD INC, MONMOUTH, IL
DELANO FORD LINCOLN-MERCURY, DELANO, FL
DIABLO LINCOLN-MERCURY INC, CONCORD, CA
DIAMOND LINCOLN-MERCURY INC, HICKSVILLE, NY
DICK BOYD FORD INC, LUDINGTON, MI
DICK RUHL FORD SALES INC, COLUMBUS, OH
DON COURTNEY FORD-MERCURY, SANDWICH, IL
DON FORD RENTAL & LEASING, BILOXI, MISS
ED SHERLING FORD INC, ENTERPRISE, AL
ELIZABETH FORD INC, ELIZABETH, NJ
ELMHURST FORD INC, OAKLAND, CA
EMPIRE FORD SALES INC, MT VERNON, NY
ERDMAN-WILLKOMM FORD L-M, MANITOWAC, WI
ERNEST WHITE FORD INC, DELAWARE, OH
EVANSTON FORD INC, EVANSTON, IL
FAMILY FORD INC, NETCONG, NJ
FAMILY FORD SALES & SERVICE, W CHICAGO, IL
FAMILY FORD SALES INC, SPARTANBURG, SC
FITZGERALD FORD INC, GIG HARBOR, WA
FIVE POINTS FORD INC, ALIQUIPPA, PA
FOUR SEASONS L-M INC, STATEN IS, NY
FOX VALLEY FORD INC, AURORA, IL
FRANK COLETTO FORD INC, HARBOR CITY, CA
FRANK PROTO L-M INC, HUNTINGTON, CA
FRED DRENDALL L-M SALES INC, PONTIAC, MI
FREEWAY FORD INC, COLUMBUS, GA
FREMONT FORD SALES INC, FREMONT, CA
FRIENDLY FORD INC, MONROE, MI
FT. WAYNE L-M INC, FORT WAYNE, IN

FULLER FORD INC, CINCINNATI, OH
FUTURE FORD INC, HOMESTEAD, PA
GATEWAY FORD INC, OZONE PARK, NY
GENE WULBERT FORD INC, OAK PARK, IL
GEORGE HALL FORD INC, KAUKAUNA, MI
GLENN LAKEY FORD INC, MUSKEGON, MI
GRAND FORD INC, BRONX, NY
GREENVILLE FORD-L-M INC, GREENVILLE, MI
GUS SHAFFAR FORD INC, DALLAS, TX
GUS SHAFFAR FORD INC, JOPLIN, MO
HAL CURTIS FORD INC, MARLBORO, MA
HAMMONASSET FORD-L-M INC, MADISON, CT
HARDING STRAUSS LEASING, RICHMOND, VA
HASSESTT L-M SALES INC, WANTAGH, NY
HERITAGE FORD INC, MODESTO, CA
HERITAGE FORD-L-M INC, COCKEVILLE TN
HERITAGE FORD-MERCURY INC, LAURINBURG, NC
HIGHLAND PARK FORD INC, HIGHLAND PARK, IL
HILLTOP FORD INC, TAMAQUA, PA
HILLTOP FORD SALES INC, RICHMOND, CA
HOLLYWOOD L-M INC, HOLLYWOOD, CA
HOPKINS FORD INC, JENKINSTOWN, PA
HUNDLEY FORD INC, PROVIDENCE, KY
ILLINOIS AUTO LEASING INC, LIBERTYVILLE, IL
INDIAN SPRINGS FOPD INC, KANSAS CITY, KS
INTERSTATE FORD INC, MIAMISBURG, OH
INTERSTATE FORD SALES INC, ST. JOSEPH, MO
JACK LOFTUS FORD INC, WILLOWBROOK, IL
JIM COLE FORD INC, PITTSBURGH, PA
JIM DIXON LINCOLN-MERCURY, FAIRFIELD, OH
JIM EWING FORD INC, CHARLOTTESVI, VA
JIM HOUSTON FORD INC, FEDERAL WAY, WA
JIM SHORT FORD SALES, INC, BIRMINGHAM, AL
JIM WHALEN FORD SALES INC, ELGIN, IL
JOE CARINI L-M SALES INC, WAUKESHA, WI
JOHN FORMOLO FORD INC, GLENDALE, WI
JOHN STRIALING FORD INC, KLAMATH, OR
KARR'S FORD SALES INC, HOUGHTON, MI
KELLER LEASING & RENTAL INC, GRAND RAPIDS, MI
KEN HILTON FORD SALES INC, BIRMINGHAM, AL
KERRY LEASING INC, CINCINNATI, OHIO
KEYSTONE FORD INC, NORWALK, CA
KING'S COLONIAL FORD INC, BRUNSWICK, GA
KING'S CROWN FORD INC, JACKSONVILLE, FL
KINGSROW FORD L-M INC, HANFORD, CA
KNIGHT LINCOLN-MERCURY INC, WYNNEWOOD, PA

KUHNS-HARNISH FORD INC, MECHANICSBUR, PA
KUMFCO AUTO LEASE CO, ENGLEWOOD, COLO
LAKE-LINE MOTORS INC, KENOSHA, WI
LANDMARK FORD SALES INC, FAIRFIELD, OH
LAWRENCE L-M INC, TRENTON, NJ
LEBANON FORD INC, LEBANON, OR
LEEDS FORD INC, CHICAGO, ILL
LEWIS DYER FORD-MERCURY INC, LA FAYETTE, GA
LIBERTYVILLE L-M SALES INC, LIBERTYVILLE, IL
LIMA LINCOLN-MERCURY INC, LIMA, OH
LOMBARD LINCOLN-MERCURY INC, LOMBARD, IL
LOUNSBURY FORD INC, COQUILLE, OR
LYNCHBURG FORD INC, LYNCHBURG, VA
MANHATTAN FORD INC, MANHATTAN BE, CA
MANHATTAN FORD L-M INC, NEW YORK, NY
MANOR FORD INC, E NORTHPORT, NY
MARKLEY FORD INC, RICHARDSON, TX
MARPLE FORD INC, PA
MARSHAL MIZE FORD INC, HIXSON, TN
MAYFAIR FORD INC, MILWAUKEE, WI
MC CAFFERTY FORD SALES, INC, LANGHORNE, PA
MCBAIN L-M LTD INC, MILWAUKEE, WI
MCDONALD FORD EAST INC, DETROIT, MI
MEL BURNS FORD INC, LONG BEACH, CA
MEL FARR FORD INC, OAK PARK, MI
MERRIMACK L-M INC, METHUEN, MA
METRO FORD SALES INC, SCHENECTADY, NY
METROPOLITAN L-M INC, LOUISVILLE, KY
MIDDLEKAUFF FORD INC, DALLAS, TX
MILLER-MCVEIGH LEASING INC, ST COLLEGE, PA
MILLINOCKET FORD-MERC INC, MILLINOCKET, ME
MIRACLE FORD INC, GALLATIN, TN
MISSION LINCOLN-MERCURY INC, HAYWARD, CA
MONARCH LEASING INC, SUNNYVALE, CA
MONTROSE FORD INC, AKRON, OH
MTM. VIEW FORD INC, CHATTANOOGA, TN
NELSON FORD-MERCURY INC, DEFUNIAK, FL
NEW ROCHELLE L-M INC, NEW ROCHELLE, NY
NIAGARA FALLS L-M INC, NIAGARA FLS, NY
NILES FORD L-M INC, NILES, MI
NORM JOSEPH FORD INC, DAVISON, MI
NORMAN LINCOLN-MERCURY INC, WESTBROOK, ME
NORTH BROS FORD LEASING INC, GARDEN CITY, MI
NORTH CENTRAL SALES INC, RICHARDSON, TX

NORTH HILLS L-M SALES INC, FORT WORTH, TX
NORTH LINCOLN-MERCURY INC, INDIANAPOLIS, IN
NORTH STAR L-M INC, POUGHKEEPSIE, NY
NORTHEAST LEASING INC, WASHINGTON, DC
NORTHTOWNE L-M INC, KANSAS CITY, MO
OAK LANE FORD INC, PHILADELPHIA, PA
OLD SOUTH FORD INC, LEXINGTON, NC
OLDE TOWNE L-M SALES INC, WINDSOR, CT
ONE MOORE FORD INC, LITTLEROCK, AR
PACIFIC FORD INC, LONG BEACH, CA
PARKVIEW FORD INC, MIDDLETOWN, OH
PARKWAY FORD INC, MADISONVILLE, KY
PENN CIRCLE FORD INC, PITTSBURGH, PA
PEYTON CRAMER LEASING INC, REDONDO BCH, CA
PITTSBURGH FORD INC, PITTSBURGH, CA
PLAINFIELD L-M SALES INC, GRAND RAPIDS, MI
POPULAR FORD INC, BROOKLYN, NY
POPULAR FORD SALES INC, BROOKLYN, NY
POUGHKEEPSIE FORD INC, POUGHKEEPSIE, NY
PRESTIGE L-M INC, NANUET, NY
PRIDE LINCOLN-MERCURY INC, LYNN, MA
RAMSEY-STURMAN FORD INC, W MIFFLIN, PA
RAY ELLIS FORD INC, AMSTERDAM, NY
REDWOOD L-M LEASING INC, S FRANCISCO, CA
RENAISSANCE FORD INC, DETROIT, MI
RICK HUNT FORD INC, WARRENTON, VA
RIO HONDO FORD INC, MONTEBELLO, CA
RIVER CITY L-M INC, SACRAMENTO, CA
RIVER OAKS L-M INC, CALUMET CITY, IL
RIVERSIDE L-M INC, MADISON, TN
ROBERTS MOTOR SALES INC, ATTLEBORO, MA
ROCK RIVER FORD INC, ROCKFORD, IL
ROGER KARNS FORD INC, ONEONTA, NY
ROMEO FORD INC, ROMEOVILLE, IL
RON ROBERTS FORD INC, WICHITA FALL, TX
ROSLYN FORD INC, GREENVALE, NY
ROWAN LINCOLN-MERCURY INC, WINTER HAVEN, FL
SAM JOHNSON L-M INC, CHARLOTTE, NC
SAN BRUNO FORD INC, SAN BRUNO, CA
SAN FRANCISCO L-M INC, SAN FRAN, CA
SANGER FORD MERCURY INC, SANGER, CA
SANTA BARBARA L-M INC, S BARBARA, CA
SEEKINS FORD-L-M INC, FAIBANKS, AK
SENTRY L-M SALES INC, MEDFORD, MA
SHEEHY LINCOLN-MERCURY, INC, SPRINGFIELD, PA
SHEN LINCOLN-MERCURY INC, BURLINGAME, CA

SHIRETOWN FORD INC, PLYMOUTH, MA
SHOEMAKER-FINCH FORD INC, SPRINGFIELD, OH
SINCLAIR MEANS FORD INC, DAYTON, OH
SOUTHERN L-M INC, DECATUR, GA
SOUTHGATE FORD SALES INC, MILWAUKEE, WI
SPALDING FORD-L-M INC, GRIFFIN, GA
SPOKANE L-M SALES INC, SPOKANE, WA
SPRINGFIELD FORD L-M INC, SPRINGFIELD, TN
SPRINGFIELD L-M CO INC, SPRINGFIELD, MA
STADIUM LINCOLN-MERCURY INC, YOUNGSTOWN, OH
STAN JOHNSON FORD SALES INC, NEEHAN, WI
STAN MARTIN FORD INC, HUDSON, NY
STARKVILLE FORD-MERCURY INC, STARKVILLE, MS
STEVE HARRIS FORD L M INC, LA GRANGE, GA
STUARD FORD INC, FERRIDAY, LA
SUBURBAN FORD SALES INC, IMPERIAL, MO
SWANSON FORD SALES INC, FEDERAL WAY, WA
TARGET FORD, MONROEVILLE, PA
TATE FORD LINCOLN-MERCURY, HOLBROOK, AZ
TAYLOR L-M SALS INC, CINCINNATI, OH
TERRY AUTO LEASE INC, POMPANO BCH, FLA
TERRY'S LEASING INC, ORLAND PARK, ILL
TOM MOLZER FORD INC, FARMINGTON HL MI
TOM MC CLELLAN FORD INC, AMARILLO, TX
TOM SHERIDAN FORD-MERC INC, BRYAN, OH
TOTTEN-EVERT FORD-L-M INC, MARQUETTE, MI
TOWER FORD SALES INC, BALTIMORE, MD
TRISTATE FORD INC, ELKTON, MD
TROY MOTORS LEASING INC, TROY, MI
TURNER FLANNERY LEASING INC, TROY, MI
TWIN AUTO LEASING & RENTAL, PLAINWELL, MI
UNIVERSITY FORD SALES & SER, BOWLING GRN, OH
VAN NUYS L-M INC, VAN NUYS, CA
VANTAGE FORD-L-M INC, EL DORADO, KS
VARSITY FORD INC, ANN ARBOR, MI
VASSALL-DILWORTH L/M INC, PHILADELPHIA, PA
VILLAGE FORD INC, DEARBORN, MI
WAYNE BLACKWOOD L-M INC, ROME, GA
WAYNE RUSSELL FORD INC, ANGLETON, TX
WAYNESBORO FORD-MERCURY INC, WAYNESBORO, PA
WESTWAY MOTOR SALES INC, IRVING, TX
WHITE PLAINS FORD SALES INC, WHITE PLANES, NY
WHITEWATER FORD L-M INC, CONNERSVILLE, IN
WILLOWBROOK FORD INC, WILLOWBROOK, IL
WOLTZ & WIND FORD, HEIDELBERG, PA
WYATT LINCOLN-MERCURY INC, REDDING, CA
ZAREK FORD INC, CHICAGO, IL

APPENDIX B

OPINION

(United States District Court
Eastern District of Michigan
Southern Division)

(Dollar Electric Company, Plaintiff vs Syndevco, Inc., and Ford Motor Company, Defendants, Civil Action Nos. 7-70057 and 8-71705)

In an opinion dated September 10, 1979, in the above-captioned case, I found, *inter alia*, that claims 4 and 5 of the Winsand patent were invalid because they are not "non-obvious." 35 U.S.C. § 103. (Opinion, at 28, 29.) Thus, plaintiff's claim of patent infringement as to these claims failed. Plaintiff now requests a finding that claims 4 and 5 of the Winsand patent are not obvious and are, therefore, valid.

Its arguments are essentially: that there is no evidence submitted as to the "obviousness" of claims 4 and 5, and therefore I could not properly make such a finding; and, based on the evidence submitted, a finding of obviousness was unwarranted.

Plaintiff argues that since there was "no expert testimony, lay testimony, documentary evidence, or physical evidence" (plaintiff's reply brief, p. 3) as to the obviousness of claims 4 and 5, I cannot make such a finding. It is clear from the case law, however, that "obviousness" is a determination to be made primarily on evidence adduced as to three factual questions.

> While the ultimate question of patent viability is one of law (citation omitted), the § 103 condition, which is but one of three conditions, each of

> which must be satisfied, lends itself to several basic factual inquiries. Under § 103, the scope and content of the prior art are to be determined; differences between the prior art and the claims at issue are to be ascertained; and the level of ordinary skill in the pertinent art resolved. Against this background, the obviousness or nonobviousness of the subject matter is determined. *Graham* v. *John Deere*, 383 U.S. 1,17 (1965).

As to these factual questions, substantial evidence and testimony was submitted and considered by me. (*See*, Opinion, pp. 10-28.) I therefore do not accept plaintiff's argument here that a finding of "obviousness" could not be made because there was no evidence to support it.

Plaintiff relies particularly on appellate decisions in *Buzzelli* v. *Minnesota Mining & Mfg.*, 480 F.2d 541 (6th Cir. 1973); *Tee-Pak* v. *St. Regis Paper*, 491 F.2d 1193 (6th Cir. 1974); *Tapco Products* v. *Van Mark*, 446 F.2d 420 (6th Cir. 1971); *Reiner* v. *I. Leon Co.*, 285 F.2d 501 (2nd Cir. 1960). It derives from these cases the principle that I may not on my own determine the issue of obviousness without expert testimony, declaring that the patent was obvious from the prior art. While these opinions do contain such statements, which, if taken out of context, support plaintiff's argument, in fact none of these opinions disagrees with the test laid down in *Graham*, *supra*. For example, in *Reiner*, at 504, Judge Hand states

> The test laid down is indeed misty enough. It directs us to surmise what was the range of ingenuity of a person 'having ordinary skill' in an 'art' with which we are totally unfamiliar; and we

> do not see how such a standard can be applied at all except by recourse to the earlier work in the art, and to the general history of the means available at the time. To judge on our own that this or that new assembiage of old factors was, or was not, 'obvious' is to substitute our ignorance for the acquaintance with the subject of those who were familiar with it. There are indeed some sign posts: e.g., how long did the need exist; how many tried to find the way; how long did the surrounding and accessory arts disclose the means; how immediately was the invention recognized as an answer by those who used the new variant?*

See also, Tapco, supra, at 426; *Tee-Pak, supra,* at 1198 (court specifically not making a finding of obviousness); *Buzzelli, supra,* at 543.

The second argument raised by plaintiff is that the finding of obviousness as to claims 4 and 5 is unwarranted based on the evidence considered by me. In support of this position plaintiff singles out a number of statements and conclusions in the opinion which, it argues, were in error. These for the most part concern matters raised as "Secondary Considerstions." (Opinion, pp. 29,30.) Without deciding the merits of plaintiff's claim of error as to these issues, I do not find that these considerations, even if reversed, would change my determination that claims 4 and 5 were "obvious" and, therefore, invalid. That determination relies primarily on the test laid down by the United States Supreme Court in *Graham*; although these secondary considerations give further support, they are not crucial to that decision.

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* (The United States Court of Appeals for the Second Circuit reversing summary judgment because of factual issues involved in finding of obviousness.)

Plaintiff also disagrees with certain statements made in the opinion as to the non-complexity of the patent claims. However, I have considered all the evidence in making my decision in this case. Plaintiff points to no new issues nor to any evidence not considered by me. I therefore deny plaintiff's motion to reconsider the evidence and amend the findings.

An appropriate order is entered herewith.

/s/ John Feikens
Chief United States District Judge

Dated: December 26, 1979
Detroit, Michigan

ORDER

(United States District Court)

At a session of said Court, held in the United States Courthouse, in the City of Detroit, Wayne County, Michigan, this 26th day of December, A.D. 1979;

Present: The Honorable John Feikens
Chief United States District Judge

In accordance with the accompanying opinion, and for the reasons stated therein,

IT IS ORDERED that plaintiff's motion to reconsider the evidence and amend the findings be, and hereby is, DENIED.

/s/ John Feikens
Chief United States District Judge

Plaintiff also disagrees with certain statements made in the opinion as to the non-complexity of the patent claims. However, I have considered all the evidence in making my decision in this case. Plaintiff points to no new issues nor to any evidence not considered by me. I therefore deny plaintiff's motion to reconsider the evidence and amend the findings.

An appropriate order is entered herewith.

/s/ John Feikens
Chief United States District Judge

Dated: December 26, 1979
Detroit, Michigan

ORDER

(United States District Court)

At a session of said Court, held in the United States Courthouse, in the City of Detroit, Wayne County, Michigan, this 26th day of December, A.D. 1979;

Present: The Honorable John Feikens
Chief United States District Judge

In accordance with the accompanying opinion, and for the reasons stated therein,

IT IS ORDERED that plaintiff's motion to reconsider the evidence and amend the findings be, and hereby is, DENIED.

/s/ John Feikens
Chief United States District Judge